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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

20 IN RE: UBER TECHNOLOGIES, INC.,
21 PASSENGER SEXUAL ASSAULT
LITIGATION

Case No. 3:23-md-03084-CRB

23 || This Document Relates To:

**DEFENDANTS UBER TECHNOLOGIES,
INC., RASIER, LLC, AND RASIER-CA,
LLC'S STATEMENT IN SUPPORT OF
THEIR PROPOSED PRETRIAL ORDER
REGARDING PLAINTIFF FACT SHEET**

24 | ALL ACTIONS

Judge: Hon. Charles R. Breyer
Courtroom: 6 – 17th Floor

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1 **DEFENDANTS' STATEMENT IN SUPPORT OF THEIR PROPOSED PLAINTIFF**

2 **FACT SHEET AND FACT SHEET IMPLEMENTATION ORDER**

3 In accordance with the Court's Pretrial Order No. 5, dated December 28, 2023, ECF 175;
 4 and the Court's January 24, 2024, Order granting the parties' stipulated extension request, ECF
 5 223; Defendants Uber Technologies, Inc., Rasier, LLC, Rasier-CA, LLC (collectively "Uber"),
 6 hereby submit this statement in support of Uber's proposed plaintiff fact sheet ("PFS"),
 7 Declaration of Jessica E. Phillips ("Phillips Decl.") Ex. A, and Fact Sheet Implementation Order.
 8 Uber respectfully requests the opportunity to present oral argument in support of its proposal.

9 The parties' core disagreement is that Uber thinks that the PFS should be a "detailed"
 10 questionnaire, *In re Guidant Corp. Implantable Defibrillators Prods. Liab. Litig.*, 496 F.3d 863,
 11 865 (8th Cir. 2007), that gives Uber "the specific information necessary to defend the case against
 12 it," *In re Phenylpropanolamine (PPA) Prods. Liab. Litig.*, 460 F.3d 1217, 1234 (9th Cir. 2006);
 13 see also Phillips Decl. Ex. B at 10–51 (comprehensive PFS used in *In re Juul Labs Inc., Marketing*
 14 *Sales Practices & Products Liability Litigation*, Case No. 19-md-02913-WHO ("In re Juul")),¹
 15 while Plaintiffs have belatedly taken the position that the PFS should be much more limited and
 16 that Plaintiffs should not have to answer questions about their damages until after Rule 12(b)
 17 motions are decided.² But the purpose of the fact sheets is to assist both parties in determining
 18 how to prioritize these consolidated cases, and both sides are assisted in that endeavor by a PFS
 19 that includes basic information about each Plaintiff's claims, including details about the incident
 20 and damages. Moreover, nothing in the federal rules prohibits information about damages from
 21 being exchanged while Rule 12 motions are briefed and decided. And Plaintiffs' nonsensical
 22 approach is inconsistent with how fact sheets have been used in other MDLs, including ones for
 23 which Plaintiffs have advocated.³ The Court should order the parties to use Uber's PFS.

24

25 ¹ The *In re Juul* Fact Sheet Order cited page numbers are the numbers digitally stamped at the top
 26 of each page instead of the numbers at the bottom that reset with each exhibit.

27

28 ² Plaintiffs advocate for this position while simultaneously proposing a defense fact sheet ("DFS")
 29 that would likely require Uber to produce thousands of pages of documents.

30

31 ³ During the parties' negotiations, Plaintiffs cited the *In re Juul* PFS as an example the parties
 32 should follow. Nevertheless, the *In re Juul* PFS contains many questions that Plaintiffs have

1 **I. THE PARTIES' MEET AND CONFER EFFORTS**

2 In Uber's December 21, 2023, Statement in Support of Its Proposed Pretrial Order, Uber
 3 proposed that the parties use the fact sheets that were agreed upon in the Judicial Council
 4 Coordination Proceeding No. 5188 (the "JCCP"), as those documents had "already been
 5 extensively negotiated and effectively implemented." ECF 171 at 6.⁴ Plaintiffs disagreed. ECF
 6 168 at 5. Pretrial Order No. 5 ordered the parties to meet and confer regarding "the scope and
 7 terms of Plaintiff-related discovery, including plaintiff . . . fact sheets." ECF 175 at 3.
 8 Unfortunately, Plaintiffs did not fulfill their obligation to meaningfully collaborate with Uber
 9 regarding the scope and terms of the fact sheets.

10 The parties met and conferred regarding the fact sheets on four occasions, totaling
 11 approximately five hours, and exchanged eight drafts of the PFS. During the negotiations, the
 12 parties appeared to make some progress resolving their disputes. In particular, although Uber
 13 believes that the JCCP PFS has worked well, Uber compromised to make a number of changes to
 14 accommodate Plaintiffs' requests, including (but not limited to):

- 15 • Plaintiffs advocated for an approach to mental health records whereby only Plaintiffs who
 16 report suffering mental or emotional harm and identify one or more particular mental health
 17 injuries from an established list are required to sign an authorization that releases their
 18 mental health records. Uber agreed to this approach.⁵
- 19 • Plaintiffs' counsel complained that certain sections of the PFS restricted Plaintiffs' ability
 20 to accurately convey their experience. Uber responded to those concerns by adding
 21 "attempted" categories to the checklist Plaintiffs use to identify the misconduct they
 22 allegedly experienced, *see Phillips Decl. Ex. D at 7–8*, and for questions requiring Plaintiffs
 23 to select an answer from certain pre-determined options, Uber provided space for Plaintiffs
 24

25 objected to, *see, e.g.*, Phillips Decl. Ex. B at 22 (directing plaintiffs to identify mental health
 26 injuries), and the PFS in *In re Juul* were due by May 26, 2020, *see id.* at 3 (60 days from order).
 27 The first Rule 12(b) motions were not submitted till June 2020. *See, e.g.*, Notice of Mot. to Dismiss
 28 RICO Claims Pursuant to Rule 12(b)(6), *In re Juul*, ECF No. 645 (June 5, 2020).

29 ⁴ The Plaintiffs' JCCP leadership committee that agreed to the JCCP PFS overlaps with the MDL
 30 leadership committee. *See ECF 132-1 at 2* (letter proposing adding Brian Abramson to the
 31 proposed MDL leadership group to "facilitate coordination with the MDL and the JCCP").

32 ⁵ Compare Phillips Decl. Ex. C at 13 ("To discuss adding separate authorization for mental health
 33 records for plaintiffs claiming psychological/mental health injuries"), with Phillips Decl. Ex.
 34 A at 15–16.

1 to clarify their answers with narrative responses should they wish to.⁶ Uber also added an
 2 “if you know” qualifier to its questions.

3

- 4 • Plaintiffs complained some questions were confusing. Uber rephrased them to add clarity.⁷
- 5 • Plaintiffs requested many questions be eliminated. While Uber kept some questions, it
 6 eliminated others, including those regarding Plaintiffs’ prior legal claims and certain
 7 questions regarding criminal proceedings connected to Plaintiffs’ allegations.⁸

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 28 Despite these concessions, Uber continuously noted Plaintiffs’ non-reciprocal position that while the DFS should contain numerous burdensome document requests, the PFS should not contain any document requests.⁹ During the January 20 meet and confer, Uber noted that if Plaintiffs’ position remained the same, then Uber would ensure reciprocity in the fact sheets by adding document requests to its proposed PFS that it had not previously included. The draft DFS that Plaintiffs circulated on January 22 made clear that Plaintiffs’ position had not changed, so Uber added document requests to its proposed PFS circulated on January 23. In response, Plaintiffs’ January 26 PFS, Phillips Decl. Ex. F, *drastically* retreated not only from the few compromises they had made, but also from many of their original positions, including eliminating several of the basic questions regarding reporting the alleged incident to law enforcement, limiting the requirement that Plaintiffs identify who they spoke to about the alleged incident (including no requirement to name witnesses who are family, friends, significant others etc.), eliminating the requirement that Plaintiffs claiming lost wages provide an authorization for their employment records, and eliminating the requirement that Plaintiffs claiming certain types of mental or

⁶ See, e.g., Phillips Decl. Ex. A at 6 (questions regarding when alleged misconduct occurred), 16 (questions regarding mental or emotional harm).

⁷ Compare Phillips Decl. Ex. E at 4 (asking whether independent driver took a different route than “anticipated”), with Phillips Decl. Ex. A at 5 (asking whether independent driver took a route “other than the one suggested in the Uber Application”); compare Phillips Decl. Ex. E at 4 (asking whether alleged incident occurred “before, during, or after the Trip”), with Phillips Decl. Ex. A at 6 (asking whether alleged incident occurred before entering, after exiting, or while inside the independent driver’s vehicle).

⁸ Compare Phillips Decl. Ex. E at 6 (Questions 4(e)–(f)), with Phillips Decl. Ex. A at 10–11; compare Phillips Decl. Ex. D at 15–16 (Questions 40–42), with Phillips Decl. Ex. A at 18.

⁹ For additional reasons that fact sheets should not be used as a vehicle for serving document requests, and for a broader overview of the parties’ negotiations regarding the DFS, please see Uber’s Statement in Support of Their Proposed Pretrial Order Regarding Defendant Fact Sheet.

1 emotional harm provide an authorization for their mental health records. Plaintiffs for the first
 2 time have taken the position that Uber is entitled to only minimal information about witnesses—
 3 far less than the federal rules require for initial disclosures—and to virtually no information about
 4 the actual damages Plaintiffs are alleging in these cases.

5 **II. THE PARTIES' DISAGREEMENTS**

6 Because the parties disagree about the PFS' basic function, they disagree about many of its
 7 specific aspects. For example, (1) Plaintiffs seek to limit Uber from obtaining information from
 8 third parties Plaintiffs identify as having relevant information; (2) Plaintiffs refuse to provide to
 9 Uber information about their employment or education, telephone numbers, email addresses,
 10 social media platforms, and other texting applications; (3) Plaintiffs refuse to provide to Uber basic
 11 information about the Uber trip connected to a Plaintiff's claim, including the start and end
 12 location; (4) Plaintiffs refuse to provide to Uber information about their interactions with law
 13 enforcement; (5) Plaintiffs refuse to provide to Uber information about their injuries; (6) Plaintiffs
 14 refuse to produce relevant documents to Uber; and (7) Plaintiffs who report suffering a specific
 15 mental health injury refuse to authorize the release of their mental health records to Uber.

16 **III. THE COURT SHOULD ADOPT UBER'S PROPOSAL OVER PLAINTIFFS'**

17 **A. Uber's Proposal Better Fulfills the PFS's Purpose**

18 The PFS' purpose “is to assemble considerable detail regarding each plaintiff in respect to
 19 its claim against each defendant.” *In re Diet Drugs (Phentermine, Fenfluramine, Dexenfluramine)*
 20 *Prods. Liab. Litig.*, Nos. MDL 1203, Civ. 98–20070, 1999 WL 387322, at *1 (E.D. Pa. May 19,
 21 1999). Uber’s proposal meets that standard by, among other things, directing Plaintiffs to list
 22 information about the events giving rise to their claims (the “Incident”), Phillips Decl. Ex. A at 7–
 23 9, and the alleged injuries they suffered, *id.* at 15–18. Both parties will benefit from a
 24 comprehensive PFS when making strategic and case-management decisions in this litigation.

25 However, Uber is uniquely susceptible to prejudice without a comprehensive PFS. See *In*
 26 *re Phenylpropanolamine*, 460 F.3d at 1234 (deferring to district court’s conclusion that a
 27 “defendant was unable to mount its defense” without a PFS “because it had no information about
 28 the plaintiff or the plaintiff’s injuries outside the” complaint). The risk of prejudice is particularly

1 pronounced here for two reasons. First, Plaintiffs' cases are highly individualized, involving
 2 allegations ranging from "Inappropriate Comments," Phillips Decl. Ex. A at 7, to "Sexual
 3 Penetration" and "Kidnapping," *id.* at 9. The PFS must be correspondingly thorough. Second, in
 4 its Pretrial Order No. 5, the Court extended the stay of discovery *but only as to Plaintiffs*. See ECF
 5 175 at 2–3.¹⁰ Hence, while Uber must serve Plaintiffs with Rule 26 initial disclosures in February,
 6 *id.* at 3, Plaintiffs do not have a reciprocal obligation. Denying Uber a comprehensive PFS while
 7 requiring Uber provide Plaintiffs with an array of discovery responses would be patently unfair.

8 B. Where the Parties Differ, the Court Should Adopt Uber's Proposal

9 1. The Information Uber Can Obtain from and About Third Parties with 10 Discoverable Information

11 Plaintiffs' proposal includes a provision that "Defendants will not contact any health care
 12 provider identified in this [PFS], other than for the purpose of seeking records pursuant to
 13 authorizations signed by Plaintiff, without Plaintiff's consent or Court Order." Phillips Decl. Ex.
 14 F at 2. "Other than witnesses to the Incident, Defendants will not contact any person with whom
 15 Plaintiff has spoken about the Incident identified in this [PFS] without Plaintiff's consent or Court
 16 Order." *Id.* There is no support, either in the Rules of Civil Procedure or Ninth Circuit case law,
 17 for Plaintiffs' proposal. There is no such provision in the JCCP PFS nor in any other MDL PFS
 18 Uber has reviewed. *See* Phillips Decl. Ex. E at 1–2. Plaintiffs have chosen to sue Uber, and a
 19 consequence of such decision is that Uber may investigate Plaintiffs' claims through, among other
 20 means, contacting and interviewing individuals with discoverable information.¹¹

21 Plaintiffs likewise object to directing Plaintiffs to list the individuals with whom they have
 22 discussed the Incident (if any). *See* Phillips Decl. Ex. A at 14. This question is not burdensome
 23 to Plaintiffs. The information is readily within each Plaintiff's knowledge, and it is critical that
 24 Uber have this information as these individuals are highly likely to have discoverable information.
 25 Indeed, a broader version of this question was used in the JCCP. Phillips Decl. Ex. E at 7, 10.

26 ¹⁰ The Court made an exception to this extended stay by ordering Plaintiffs to produce bona fide
 27 ride receipts by February 15, 2024. *Id.*

28 ¹¹ Uber will, of course, communicate with those represented by counsel only through counsel.

1 Plaintiffs also object to asking Plaintiffs to note the approximate date(s) they or someone
 2 on their behalf notified a health care provider of the Incident. *Compare* Phillips Decl. Ex. A at 12,
 3 *with* Phillips Decl. Ex. F at 12. But when a health care provider was notified of the Incident (e.g.,
 4 immediately after or years after) is relevant to understanding Plaintiffs' alleged injuries' severity.

5 2. Questions Asking for Basic Information About a Plaintiff

6 Plaintiffs object to including questions about each Plaintiff's telephone numbers, email
 7 addresses, social media platforms, and other texting applications. *See* Phillips Decl. Ex. A at 3
 8 (Questions 5–8); *see also id.* at 13–14 (Questions 37(a) and 38). This basic information, designed
 9 to assist the parties in streamlining discovery, is not difficult for Plaintiffs to provide.

10 Plaintiffs also argue that the PFS should not require listing any employment or education
 11 information even in cases where Plaintiffs claim lost wages. *Compare* Phillips Decl. Ex. A at 3–
 12 4, *with* Phillips Decl. Ex. F at 3. But Plaintiffs' earlier proposals included these questions, *see*,
 13 e.g., Phillips Decl. Ex. G at 3–4, and versions of these questions were included in the JCCP and in
 14 other MDL PFS. *See* Phillips Decl. Ex. E at 3; *see, e.g.*, Phillips Decl. Ex. B at 13–14. Uber is
 15 entitled to this information given it is not particularly sensitive and is relevant to damages.

16 3. Questions Regarding a Plaintiff's Uber Trip

17 Questions 15 and 16 of Uber's PFS ask Plaintiffs to list, to their recollection, where the trip
 18 allegedly connected to their claims originated and its requested destination. Phillips Decl. Ex. A
 19 at 5. Plaintiffs view these questions as duplicative of the ride receipt. However, not every Plaintiff
 20 may provide a receipt. *See* ECF 175 at 2–3. Nevertheless, these questions are not burdensome,
 21 are well within Plaintiffs' knowledge, and were in the JCCP. Phillips Decl. Ex. E at 4.

22 Questions 18 through 20 of Uber's PFS asks Plaintiffs whether their independent driver
 23 took them to the requested destination via an alternate route or stopped at a location other than the
 24 requested destination. Phillips Decl. Ex. A at 5. Plaintiffs object to several sub-questions asking
 25 why these deviations occurred, if known. *Compare id.*, *with* Phillips Decl. Ex. F at 3–4 (omitting
 26 Questions 18(b), 19(b), and 20(b) from Uber's PFS); *see also* Phillips Decl. Ex. F at 4 (not asking
 27 whether the independent driver took an alternate route). Plaintiffs claim that these questions
 28 improperly call for speculation or information Plaintiffs will not know. But Uber's PFS instructs

1 Plaintiffs to answer only if they know. *See* Phillips Decl. Ex. A at 5. Variations of these questions
 2 were also used in the JCCP. Phillips Decl. Ex. E at 4 (Questions 11, 12(b), and 13(b)).

3 4. Questions Regarding Interactions with Law Enforcement

4 Plaintiffs object to Question 30(a), (b), and (d) of Uber's PFS. *Compare* Phillips Decl. Ex.
 5 A at 10, *with* Phillips Decl. Ex. F at 10. These questions ask Plaintiffs to list, to the best of their
 6 ability, when they or someone on their behalf notified law enforcement of the Incident, the contact
 7 information of anyone who notified law enforcement on Plaintiffs' behalf, and the names of all
 8 agents the Plaintiffs and those acting on Plaintiffs' behalf have spoken to. Phillips Decl. Ex. A at
 9 10. These reasonable questions are aimed at locating individuals with discoverable information.
 10 They too were included in the JCCP. Phillips Decl. Ex. E at 6.

11 Plaintiffs take issue with Question 30(e) of Uber's PFS, which ask Plaintiffs who have
 12 testified in any criminal hearing or trial in connection with their claims to list the courthouses and
 13 years in which they testified. *Compare* Phillips Decl. Ex. A at 11, *with* Phillips Decl. Ex. F at 10
 14 (requiring only the city and state where Plaintiffs testified). This information is within Plaintiffs'
 15 knowledge, is not burdensome to provide, and is important for efficiently locating relevant records.
 16 Again, a similar question was included in the JCCP that in fact was broader and requested more
 17 specific information. *See* Phillips Decl. Ex. E at 6.

18 5. Questions Regarding Damages

19 Plaintiffs object to the PFS including a chart that Plaintiffs can use to identify their mental
 20 health injuries, *see* Phillips Decl. Ex. A at 15; instructing Plaintiffs who anticipate seeking out-of-
 21 pocket costs to describe the costs they have incurred, *id.* at 18; and asking Plaintiffs who anticipate
 22 making a lost wages claim to state, to the best of their ability, their wages before and after the
 23 Incident, *id.* at 17; *see* Phillips Decl. Ex. F at 11–12 (eliminating these questions and Questions
 24 39(b) and 41 of Uber's PFS asking whether Plaintiffs continue to suffer harm due to the Incident).

25 Uber first proposed the mental health injuries chart on January 18, Phillips Decl. Ex. D at
 26 12, which Plaintiffs adopted with some modifications on January 22, Phillips Decl. Ex. G at 12–
 27 13. Plaintiffs sent Uber two proposals that included an out-of-pocket expenses chart like the one
 28 used in the JCCP. *Compare* Phillips Decl. Ex. E at 9, *with* Phillips Decl. Ex. C at 10, *and* Phillips

1 Decl. Ex. G at 16. Plaintiffs have now, for unclear reasons, eliminated both charts from their
 2 proposal and have steadfastly refused to include a question on lost wages. Plaintiffs' proposals
 3 would harm both sides as learning the exact nature of a Plaintiff's claimed injuries, whether it be
 4 physical, mental, or lost wages, will help streamline discovery. Uber's proposed charts are also
 5 superior to Plaintiffs' primarily narrative-based questions because, as Uber learned in the JCCP,
 6 many Plaintiffs will fail to fully describe their damages if presented with only a narrative prompt.

7 6. Requests for Production of Documents

8 As Uber has explained, Plaintiffs' insistence on using their proposed DFS as a vehicle to
 9 request broad, burdensome, irrelevant, and voluminous document productions is inappropriate. If
 10 the Court determines, however, that the fact sheets should include document requests, then such
 11 approach should be reciprocal. The requests for production in Uber's PFS are limited in scope and
 12 seek information relevant to the claims in these cases, including Plaintiff's use of the Uber
 13 Application, communications with Uber, communications with the accused independent driver,
 14 communications regarding the Incident, social media posts, and communications with other
 15 alleged victims. *See* Phillips Decl. Ex. A at 18–19.

16 7. Release Forms

17 The parties dispute several aspects of the release forms authorizing the disclosure of certain
 18 records. The first dispute is whether any Plaintiff should have to authorize the release of their
 19 mental health records. Plaintiffs' most recent proposal does not include this authorization form,
 20 *see* Phillips Decl. Ex. F at 13, which is an unexpected departure from Plaintiffs' prior positions,
 21 *see* Phillips Decl. Ex. G at 17; Phillips Decl. Ex. C at 13. Uber proposes requiring only those
 22 Plaintiffs who report suffering a specific mental health injury to sign an authorization for mental
 23 health records. *See* Phillips Decl. Ex. A at 15–16. Disclosure of these records is appropriate,¹²
 24 and consistent with other MDL PFSs. *See, e.g.*, Phillips Decl. Ex. B at 22–23.

25 ¹² *See Dornell v. City of San Mateo*, No. CV 12-06065-CRB (KAW), 2013 WL 5443036, at *3
 26 (N.D. Cal. Sept. 30, 2013) (“[A] plaintiff waives her privacy rights [in her mental health records]
 27 if the alleged emotional distress claims are more than ‘garden variety.’” (citation omitted)); *see also Pringle v. Wheeler*, No. 19-cv-07432-WHO, 2021 WL 1907824, at *3 (N.D. Cal. Apr. 16,
 28 2021) (collecting cases held to not present garden-variety emotional distress claims, including
 cases alleging anxiety, sleeplessness, and depression).

1 Second, Plaintiffs refuse to include in the proposed PFS an authorization to release
 2 employment records, *see Phillips Decl. Ex. F at 13*, which is another recent departure from
 3 Plaintiffs' prior positions, *see Phillips Decl. Ex. G at 17*. As Plaintiffs proposed originally, Uber
 4 proposes requiring only those Plaintiffs "making lost wage claims" authorize disclosure of their
 5 employment records. Phillips Decl. Ex. C at 13; *see Phillips Decl. Ex. A at 17*. These Plaintiffs
 6 have placed their employment record in controversy, and disclosure is appropriate.¹³ Uber's
 7 position is also consistent with other MDL PFS. *See, e.g.*, Phillips Decl. Ex. B at 27.

8 Third, Plaintiffs refuse to include in the proposed fact sheet a release authorizing disclosure
 9 of telephone records. *See Phillips Decl. Ex. A at 14*. But Uber's proposal is limited in that it
 10 applies only to Plaintiffs who have communicated on the phone about the Incident, *id.*, and covers
 11 only records from the Incident to the present, *id.*, Ex. E at 1.

12 Fourth, the parties dispute which Plaintiffs must authorize the release of their physical
 13 health records and law enforcement records. Plaintiffs argue that only those Plaintiffs who have
 14 seen a non-mental healthcare provider for treatment related to the Incident or otherwise notified a
 15 healthcare provider of the Incident must authorize the release of their physical health records
 16 Phillips Decl. Ex. F at 13. But Plaintiffs who see healthcare providers specifically about the
 17 Incident are not the only ones whose medical records will contain probative information regarding
 18 Plaintiffs' claims, including whether Plaintiffs' injuries stem from pre-existing conditions. In
 19 contrast, Uber's proposal—that Plaintiffs who have reported suffering physical harm as a result of
 20 the Incident authorize the release of their physical health records, Phillips Decl. Ex. A at 17—is
 21 more consistent with, and indeed, more plaintiff friendly than, the PFS used in the JCCP and other
 22 MDLs. *See Phillips Decl. Ex. E at 12–14* (requiring *every* plaintiff to authorize the release of their
 23 physical health records); *see, e.g.*, Phillips Decl. Ex. B at 27 (same). Similarly, Plaintiffs refuse to
 24 authorize the release of law enforcement records relating to the Incident if someone on their behalf
 25 notified law enforcement, *see Phillips Decl. Ex. F at 13*, but regardless of who reported the

26 ¹³ *See Batts v. County of Santa Clara*, No. C08-00286 JW (HRL), 2010 WL 11586791, at *1 (N.D.
 27 Cal. Sept. 17, 2010) ("Here, Batts claims lost wages This court agrees that plaintiff's
 28 [complete] employment records are relevant or reasonably calculated to lead to the discovery of
 admissible evidence").

1 Incident, the law enforcement records exist and will be highly relevant.

2 Fifth, the parties dispute the scope of the physical health record and release. Plaintiffs
 3 argue that the form should authorize the release of records only from the date of the Incident to the
 4 present, *see* Phillips Decl. Ex. F, Ex. A at 1, but this limited coverage would exclude many
 5 documents indicating whether Plaintiffs' injuries stem from pre-existing conditions. And Uber's
 6 proposal—that the release cover records from 10 years prior to the Incident through the present,
 7 Phillips Decl. Ex. A, Ex. A at 1—is consistent with other MDLs. *See, e.g.*, Phillips Decl. Ex. B at
 8 30 (release covering 10 years of records). Plaintiffs also omit language from the physical health
 9 record release stating that it authorizes the release of insurance records and documents related to
 10 public assistance claims, *compare* Phillips Decl. Ex. A, Ex. A at 2 (stating release covers “[a]ll
 11 insurance records, including . . .”), *with* Phillips Decl. Ex. F, Ex. A at 2 (omitting statement). But
 12 there is no reason to exclude those records from the release and including them in the release is
 13 consistent with the broad language of the releases in the JCCP PFS and other MDLs. *See* Phillips
 14 Decl. Ex. E at 12–13 (noting records covered are not limited to those listed but listing workers’
 15 compensation claims); *see, e.g.*, Phillips Decl. Ex. B at 30 (similar).

16 Finally, Plaintiffs object to including an acknowledgement in the authorization forms that
 17 the authorization form “shall not preclude any party from later seeking additional records.” *See,*
 18 *e.g.*, Phillips Decl. Ex. A, Ex. A at 4. This acknowledgement is a benign safeguard designed to
 19 protect the parties’ rights to pursue discovery. It should be included in the PFS.

20 **IV. CONCLUSION**

21 For the foregoing reasons, the Court should adopt Uber’s proposed PFS and Fact Sheet
 22 Implementation Order.

23
 24 DATED: January 31, 2024

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